我國精神衛生法保護人制度之檢討

鄭 雅 文*

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關鍵詞：精神疾病、監護人、保護人、嚴重病人、精神衛生法。

Keywords：mental disorder, guardian of civil code, guardian of mental health act, severe patient, mental health act.

責任校對：蔡浩志

* 國立臺灣大學法律學研究所（民事法學組）研究生。

摘　要

針對意思能力欠缺之人，我國設有民法成年監護制度與精神衛生法保護人制度，惟保護人制度實存在諸多缺失，不僅不當過度擴張其權限，現行法令規定、實證資料亦不完備，均有損於嚴重病人之權益。為避免監護人與保護人有異時將產生雙頭馬車之困境，本文建議參考日本法制，廢除保護人制度，改由監護人職司嚴重病人之保護事務；蓋精神醫療事務與病患人身健康之護養療治密不可分，實無庸、亦無必要割裂為二。再者，須針對精神衛生法、民法相關條文（例如嚴重病人與受監護人之定義、辭任後之義務等）進行相應調整，英國相關法律體系針對無意思能力人之保障設有較為嚴整之規範，得為我國所借鑒。由於我國現行成年監護人之對象主要亦由家屬擔任，無法充分回應少子女化、高齡化之問題，另家屬所負擔之責任並無法因保護人制度之廢止獲得實質減輕，此亦涉及公、私部門責任劃分（國親思想）之議題。另外，就監督機制之設計，如何妥適劃分行政、司法與私人負責之界限，俾嚴重病人之事務能獲得迅速且公允之決定，猶待更多理論與實務之對話。

A Comparative Study of Guardianship under R.O.C. Mental Health Act

Jeng, Ya-Wen

Abstract

This thesis aims at analyzing the guardianships under R.O.C. Mental Health Act, and proposing suggestions for incumbent legal systems via comparative studies. It attempts to answer the following vexing question: how to apply law if a person, who lacks adequate capacity, fits in with both the definitions of "severe patient (Article 3 of Mental Health Act)" and "person under guardianship (Article 14 of Civil Code)"? At present, there are no instructions under current law and relative studies are surprisingly few.

Generally speaking, this thesis proposes the abolishment of mental health guardianships (as Japan's approach) and the modification to the definition of severe patients. The civil guardian should take charge instead. Secondly, the UK has established a relatively comprehensive legal framework regarding the protection of those who lack capacity, which is highly valuable for reference. Furthermore, once the patient is diagnosed as "severe patient", hospitals are obliged to file for the application of guardianships. Prior to the decision made by court, family members should act us temporary guardian and the contact person. Thus, we can prevent the dilemma and potential problems caused by these two regulations, and defend the legal rights and best interests for those in need.